

RESOLUTION NO. 15-17

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA AUTHORIZING A REVOLVING LINE OF CREDIT IN A PRINCIPAL AMOUNT NOT TO BE OUTSTANDING THEREUNDER AT ANY ONE TIME TO EXCEED \$1,500,000 WITH SUNTRUST BANK OR AN AFFILIATE THEREOF TO FINANCE WORKING CAPITAL NEEDS OF THE VILLAGE AND TO PAY THE COSTS OF SUCH LINE OF CREDIT; APPROVING THE FORM OF A COMMERCIAL NOTE AND AGREEMENT TO COMMERCIAL NOTE; DELEGATING TO THE CHAIR, VICE CHAIR OR VILLAGE MANAGER THE AUTHORITY TO EXECUTE AND DELIVER THE COMMERCIAL NOTE, AGREEMENT TO COMMERCIAL NOTE AND ALL OTHER AGREEMENTS RELATED THERETO; PROVIDING OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA (the "Issuer") that:

Section 1. Authority for this Resolution. This Resolution is adopted pursuant to the Charter of the Issuer, Chapter 166, Florida Statutes, Article VIII, Section 2, Constitution of the State of Florida, Chapter 2014-249, Laws of Florida and other applicable provisions of law (collectively, the "Act").

Section 2. Definitions. Words and phrases used herein in capitalized form and not otherwise defined herein (including, without limitation, in the preamble hereto) shall have the meanings ascribed thereto in the Loan Agreement (hereinafter defined) and, in addition, the following words and phrases shall have the following meanings:

"Authorized Signatories" means any one or more of the Chair, Vice Chair and the Village Manager of the Issuer.

Section 3. Authorization of Transaction. In order to obtain funds to finance working capital needs of the Issuer, the Issuer is authorized to obtain a revolving line of credit (the "Loan") and to borrow an amount not to be outstanding thereunder at any one time in excess of \$1,500,000 (the "Loan Amount") from SunTrust Bank or an affiliate thereof (the "Lender"), maturing not more than 365 days from the date of issuance and delivery thereof, pursuant to the terms of a commitment letter presented by the Lender and attached as Exhibit "A" hereto.

Because of prevailing and anticipated market conditions and the nature of the Loan, the recent creation of the Issuer and its lack of history of collecting revenues, it is not feasible, cost effective or advantageous to enter into the Loan through a competitive sale and it is in the best interest of the Issuer to accept the terms of the Loan from the Lender in a principal amount not to be outstanding at any one time in excess of the Loan Amount, at a negotiated sale upon the terms and conditions outlined herein and in the Loan Agreement (as hereinafter defined) and as determined by the Authorized Signatory executing the Loan Agreement in accordance with the terms hereof.

Prior to its execution and delivery of the Loan Documents, as hereinafter defined, the Issuer shall have received from the Lender a disclosure statement containing the information required by Section 218.385(6), Florida Statutes, and a Truth-in-Bonding Statement pursuant to Section 218.385(3), Florida Statutes, and no further disclosure is or shall be required by the Issuer.

Section 4. Loan Agreement, Note and Escrow Deposit Agreement. The Issuer is authorized to execute an Agreement To Commercial Note with the Lender reflecting the terms of the term sheet attached hereto as Exhibit "A" (the "Loan Agreement") in substantially the form attached hereto as Exhibit "B", to make and deliver to the Lender the Issuer's Commercial Note, including Addendum A To Note attached thereto (collectively, the "Note") in the form attached hereto as Exhibit "C". The forms and terms of the Loan Agreement and the Note (collectively, the "Loan Documents") attached hereto are hereby approved, and the Authorized Signatories are authorized to execute and deliver the same, with such changes, insertions, omissions and filling of blanks as may be approved by the Authorized Signatory, executing the same, such approval to be conclusively evidenced by the execution thereof by an Authorized Signatory.

Section 5. Levy of Ad Valorem Tax; Payment and Pledge. There shall be assessed, levied and collected a tax, without limitation as to rate or amount, on all property within the Village under the provisions of the Constitution and laws of the State of Florida, sufficient in amount promptly to the principal of and interest on the Note and all other amounts due thereunder as the same shall become due. The tax assessed, levied and collected for the security and payment of the Note shall be assessed, levied and collected in the same manner and at the same time as other Village ad valorem taxes are assessed, levied and collected and the proceeds of said tax shall be applied solely to the payment of the principal of, and interest on the Note and all other amounts due under the Note and Loan Agreement.

The full faith, credit and taxing power of the Village are hereby irrevocably pledged the payment of the principal of and interest on the Note and all other amounts due thereunder and under the Loan Agreement.

Section 6. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

Section 7. Applicable Provisions of Law. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

Section 8. Authorizations. The Authorized Signatories are hereby authorized to execute and deliver on behalf of the Issuer the Loan Documents as provided hereby and the Village Clerk is hereby authorized to attest any such signatures on any such documents and to affix the Issuer's seal thereto to the extent required by such documents. All officials and employees of the Issuer, including, without limitation, the Authorized Signatories, are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, agreements and contracts on behalf of the Issuer as they shall deem necessary or desirable in connection with the completion of the Loan and the carrying out of the intention of this Resolution.

Section 9. Repealer. All resolutions or parts thereof in conflict herewith are hereby repealed.

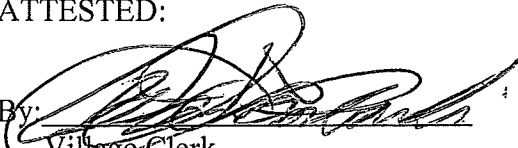
Section 10. Effective Date. This Resolution shall take effect immediately upon its adoption.

Passed and duly adopted in public session of the Village Council of the Village of Estero, Florida on the ___ day of April, 2015.


VILLAGE OF ESTERO, FLORIDA

By: 
Chair

ATTESTED:

By: 
Village Clerk

APPROVED AS TO CORRECTNESS
AND FORM:

By: 
Counsel to the Village

#34996057_v2
57389-7

EXHIBIT "A" TO RESOLUTION
TERM SHEET

EXHIBIT "B" TO RESOLUTION
FORM OF LOAN AGREEMENT

EXHIBIT "C" TO RESOLUTION
FORM OF COMMERCIAL NOTE



Commercial Note
Florida

Borrower Village of Estero, Florida Date April 7, 2015
Borrower's Address 21500 Three Oaks Parkway, Suite 200, Estero, FL 33928
Loan Amount One Million Five Hundred Thousand Dollars (\$1,500,000)
Account Number _____ Note Number _____ Officer Josh McCoy

For value received, the borrower(s) named above, whether one or more (the "Borrower"), promises to pay to the order of SunTrust Bank, a Georgia banking corporation ("SunTrust") at any of its offices, or at such place as SunTrust may in writing designate, without offset in U.S. Dollars in immediately available funds, the Loan Amount shown above, or the total of all amounts advanced under this commercial note and any modifications, renewals, extensions or replacements thereof (this "Note") if less than the full Loan Amount is advanced, plus interest and any other amounts due, upon the terms specified below.

Note Type Repayment Terms

- ☒ **Revolving Closed Master Borrowing Note With Maturity Date**
- This is an open end revolving line of credit. Borrower may borrow an aggregate principal amount up to the Loan Amount outstanding at any one time.
- Principal is due and payable in full on the Maturity Date, but the Borrower shall be liable for only so much of the Loan Amount as shall be equal to the total amount advanced to the Borrower by SunTrust from time to time, less all payments made by or for the Borrower and applied by SunTrust to principal. Advances under this Note shall be recorded and maintained by SunTrust in its internal records and such records shall be conclusive of the principal and interest owed by Borrower unless there is a material error in such records. Accrued interest will be payable on the 1st day of each quarter beginning on July 1, 2015, and on each September, January, April and July thereafter, with all unpaid accrued interest due and payable on the Maturity Date.

"Maturity Date" means April 6, 2016, or such date to which this Note may be extended or renewed in the sole discretion of SunTrust by written notice from SunTrust to Borrower.

☒ **Additional Terms And Conditions**

This Note is governed by additional terms and conditions contained in an Agreement to Commercial Note between the Borrower and SunTrust dated April 7, 2015 and any modifications, renewals, extensions or replacements thereof (the "Agreement"). In the event of a conflict between any term or condition contained in this Note and in the Agreement, such term or condition of the Agreement shall control.

Interest

Interest will accrue on an actual / 360 day basis (calculated on the basis of a 360 day year based on actual days elapsed).

Interest shall accrue from the date of disbursement on the unpaid balance and shall continue to accrue until this Note is paid in full.

Subject to the above, interest per annum payable on this Note (the "Rate") shall be:

- ☒ **Variable:** This is a variable rate transaction. The interest rate is prospectively subject to increase or decrease without prior notice and is based on the following Index.
- ☒ **The LIBOR Rate** as defined on the attached Addendum A (the "Index").

Note: The "Prime Rate" is a reference for fixing the lending rate for commercial loans. The Prime Rate is a reference rate only and does not necessarily represent the lowest rate of interest charged for commercial borrowings. If the Index is the SunTrust Prime Rate, the Index is subject to increase or decrease at the sole option of SunTrust.

The Rate shall equal the Index plus 2% per annum.

Adjustments to the Rate shall be effective as of the date referenced on the attached Addendum A.

Security

To the extent permitted by law, the Borrower grants to SunTrust a security interest in and a lien upon all deposits or investments maintained by the Borrower with SunTrust and any affiliates thereof.

The collateral for this Note includes, but is not limited to, the following:

The Note is a general obligation bond on the Borrower and is payable from the unlimited ad valorem taxes on all real and tangible personal property within the Village of Estero (excluding exempt property as required by Florida law). The full faith, credit and taxing

power of the Borrower are irrevocably pledged to the prompt payment of the principal and interest on the Note and all other amounts due hereunder as the same become due and payable.

All of the foregoing security is referred to collectively as the "Collateral".

Loan Purpose And Updated Financial Information Required

The Borrower warrants and represents that the loan evidenced by this Note is being made solely for the purpose of working capital. The Borrower agrees to provide to SunTrust updated financial information, including, but not limited to, current financial statements in form satisfactory to SunTrust, as well as additional information, reports or schedules (financial or otherwise), all as SunTrust may from time to time request.

Representations and Warranties

This Note has been duly executed and delivered by Borrower, constitutes Borrower's valid and legally binding obligations and is enforceable in accordance with its terms against Borrower. The execution, delivery and performance of this Note and the consummation of the transaction contemplated will not, with or without the giving of notice or the lapse of time, (a) violate any material law applicable to Borrower, (b) violate any judgment, writ, injunction or order of any court or governmental body or officer applicable to Borrower, (c) violate or result in the breach of any material agreement to which Borrower is a party nor (d) violate Chapter 2014-249, Laws of Florida. No consent, approval, license, permit or other authorization of any third party or any other governmental body other than the Village Council of the Borrower is required for the valid and lawful execution and delivery of this Note.

Default, Acceleration And Setoff

An "event of default" shall occur hereunder upon the occurrence of any one or more of the following events or conditions:

- (a) the failure by the Borrower to pay, whether by acceleration or otherwise, (i) any principal amount owed under this Note when due, or (ii) any interest or fees when due and such failure shall continue unremedied for a period of five (5) days thereafter;
- (b) the occurrence of any event of default under any other agreement executed in connection with this Note or the failure of the Borrower to perform any covenant, promise or obligation contained in this Note, such other agreement or any other agreement to which the Borrower and SunTrust are parties, provided, however that if such failure relates to a covenant other than a negative covenant or a financial covenant under this Note or any agreement executed in connection with this Note, the Borrower shall have thirty (30) days after the earlier of the date (i) the Borrower or any officer or representative of the Borrower becomes aware of such failure or (ii) notice of such failure is given to the Borrower by SunTrust before such failure shall constitute an event of default hereunder;
- (c) any representation or warranty of the Borrower contained in this Note or any other agreement with SunTrust shall prove to be incorrect in any material respect (other than any representation or warranty that is expressly qualified by a material adverse effect or other materiality, in which case such representation or warranty shall prove to be incorrect in any respect);
- (d) the failure of the Borrower to pay when due any principal, interest or other amount due under any indebtedness of the Borrower (after any applicable grace period specified in connection with such indebtedness) to any creditor other than SunTrust or any event shall occur or condition shall exist under any agreement or instrument relating to such indebtedness, if the effect of such event or condition is to accelerate, or permit the acceleration, of such indebtedness;
- (e) the Borrower shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any substantial part of the Borrower's property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this section (h), (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or for a substantial part of the Borrower's assets, (iv) file an answer admitting the material allegations of a petition filed against the Borrower in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing;
- (f) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or the Borrower's debts, or any substantial part of the Borrower's assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or for a substantial part of the Borrower's assets, and in any such case, such proceeding or petition shall remain undismissed for a period of sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;
- (g) the entry of a judgment in excess of \$10,000 against the Borrower which remains unstayed, unsatisfied or unbonded for thirty (30) days following the entry of the judgment, or the issuance or service of any attachment, levy or garnishment against the Borrower or the property of the Borrower or the repossession or seizure of property of the Borrower;
- (h) the sale or transfer by the Borrower of all or substantially all of the Borrower's assets other than in the ordinary course of business;
- (i) any provision of any guaranty, security agreement, or other collateral documentation shall, due to any act or failure to act by the Borrower, cease to be valid and binding on, or enforceable against, the Borrower, or the Borrower shall so state in writing, or the Borrower shall terminate or seek to terminate the Borrower's obligations under such agreements; or
- (j) a material adverse change in the financial condition, operations, business, or prospects of the Borrower has occurred since the date of this Note affecting the Borrower.

SunTrust shall not be obligated to fund this Note or make any advance under this Note if at the time such funding or advance is requested there exists (i) an event of default or (ii) an event or condition which with the passage of time or giving of notice or both would result in an event of default. Upon the occurrence of an event of default, SunTrust shall, at its option, have the remedies

provided herein and by any other agreement between SunTrust and the Borrower or under applicable law, including without limitation, declaring the entire outstanding principal balance, together with all interest thereon and any other amounts due under this Note, to be due and payable immediately without presentment, demand, protest, or notice of any kind, except notice required by law. Upon the occurrence of an event of default under paragraph (f) or (g) above, the entire outstanding principal balance, together with all interest thereon and any other amounts due under this Note, shall automatically become due and payable without presentment, demand, protest, or notice of any kind except notice required by law, and SunTrust's obligation to make advances under this Note shall automatically terminate without notice or further action by SunTrust. Upon the occurrence of an event of default, as of the date of such event of default, SunTrust, at its option, may charge interest on the unpaid balance of this Note at the lesser of (a) 18% per annum or (b) the maximum rate allowed by law (the "Default Rate") until paid in full. To the extent permitted by law, upon the occurrence of an event of default, SunTrust will have the right, in addition to all other remedies provided herein, to set off the amount due under this Note or due under any other obligation to SunTrust against any and all accounts, whether checking or savings or otherwise, credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, held by, owed by, or in the possession of, SunTrust to the credit of or for the account of Borrower, without notice or consent of Borrower. The remedies provided in this Note and any other agreement between SunTrust and the Borrower and by applicable law are cumulative and not exclusive of any other remedies provided by applicable law.

Setoff and Other Remedies Applicable to Notes Payable on Demand

To the extent permitted by law, if payment is not made upon demand, SunTrust will have the right, in addition to all other remedies permitted by law, to set off the amount due under this Note or due under any other obligation of Borrower to SunTrust against any and all accounts, whether checking or savings or otherwise, credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, held by, owed by, or in the possession of, SunTrust to the credit of or for the account of the Borrower (as defined below), without notice to or consent by the Borrower. If payment is not made upon demand, Borrower shall be deemed to be in default and SunTrust shall be entitled to interest on the unpaid balance of this Note at the Default Rate from the time of demand until paid in full. The remedies provided in this Note and any other agreement between SunTrust and the Borrower and by applicable law are cumulative and not exclusive of any other remedies provided by law.

Late Charges And Other Authorized Fees And Charges

If any portion of a payment is at least ten (10) days past due, the Borrower agrees to pay a late charge of 5% of the amount which is past due. Unless prohibited by applicable law, the Borrower agrees to pay the fee established by SunTrust from time to time for returned checks if a payment is made on this Note with a check and the check is dishonored for any reason after the second presentment. In addition to any other amounts owed under the terms of this Note, the Borrower agrees to pay those fees and charges disclosed in the attached Disbursements and Charges Summary which is incorporated in this Note by reference and, as permitted by applicable law, the Borrower agrees to pay the following: (a) all expenses, including, without limitation, any and all costs incurred by SunTrust related to enforcement, all court costs and out-of-pocket collection expenses, and reasonable attorneys' fees actually incurred, whether suit be brought or not, incurred in collecting this Note; (b) any expenses or costs (including reasonable attorneys' fees) incurred in defending any claim arising out of the execution of this Note or the obligations which it evidences; and (c) any other charges permitted by applicable law. The Borrower agrees to pay such amounts on demand or, at SunTrust's option, such amounts may be added to the unpaid balance of the Note and shall accrue interest at the stated Rate.

☒ Prepayment Provisions

Principal on this Note may be paid in whole or in part at par and without penalty at any time upon two Business Days' Notice to the Bank.

"Business Days" means any day other than a Saturday, Sunday or day on which banking institutions in the State of Florida are authorized or required by law to remain closed.

Waivers

The Borrower waives presentment, demand, protest, notice of protest and notice of dishonor and waive all exemptions, whether homestead or otherwise, as to the obligations evidenced by this Note and waive any discharge or defenses based on suretyship or impairment of Collateral or of recourse to the extent permitted by law.

Waiver of Jury Trial

THE BORROWER AND SUNTRUST HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY OTHER DOCUMENT OR INSTRUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SUNTRUST ENTERING INTO OR ACCEPTING THIS NOTE. FURTHER, THE BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF SUNTRUST, NOR SUNTRUST'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUNTRUST WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

Patriot Act Notice

SunTrust hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 signed into law October 26, 2001), SunTrust may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow SunTrust to identify the Borrower in accordance with the Act.

Hold Harmless and Indemnification

Borrower hereby indemnifies and agrees to hold SunTrust and its officers, directors, employees, agents and affiliates harmless from and against all claims, damages, liabilities, costs (including reasonable attorneys' fees and legal expenses), causes of action, actions, suits and other legal proceedings (collectively, "Claims") in any matter relating to or arising out of this Note or any document or

agreement executed in connection with this Note, or any act, event or transaction related thereto or to the Collateral. Borrower shall promptly provide SunTrust with written notice of any such Claim, provided, however, that this indemnity shall not apply to any Claims arising solely from SunTrust's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Upon request of SunTrust, Borrower shall defend SunTrust from such Claims, and pay the reasonable attorneys' fees, legal expenses and other costs actually incurred in connection therewith, or in the alternative, at SunTrust's option, SunTrust shall be entitled to employ its own legal counsel to defend such Claims at Borrower's sole expense.

Miscellaneous

All amounts received by SunTrust shall be applied to expenses, late fees and interest before principal or in any other order as determined by SunTrust, in its sole discretion, as permitted by law. Any provision of this Note which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Note. No amendment, modification, termination or waiver of any provision of this Note, nor consent to any departure by the Borrower from any term of this Note, shall in any event be effective unless it is in writing and signed by an authorized officer of SunTrust, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. If the interest Rate is tied to an external index and the index becomes unavailable during the term of this loan, SunTrust may, in its sole and absolute discretion, designate a substitute index with notice to the Borrower. No failure or delay on the part of SunTrust to exercise any right, power or remedy under this Note shall be construed as a waiver of the right to exercise the same or any other right at any time. The captions of the paragraphs of this Note are for convenience only and shall not be deemed to constitute a part hereof or used in construing the intent of the parties. All representations, warranties, covenants and agreements contained herein or made in writing by Borrower in connection herewith shall survive the execution and delivery of this Note and any other agreement, document or writing relating to or arising out of any of the foregoing. All notices or communications given to Borrower pursuant to the terms of this Note shall be in writing and may be given to Borrower at Borrower's address as stated below or at the top of this Note unless Borrower notifies SunTrust in writing of a different address. Unless otherwise specifically provided herein to the contrary, such written notices and communications shall be delivered by hand or overnight courier service, or mailed by first class mail, postage prepaid, addressed to the Borrower at the address referred to herein. Any written notice delivered by hand or by overnight courier service shall be deemed given or received upon receipt. Any written notice delivered by U.S. Mail shall be deemed given or received on the third (3rd) business day after being deposited in the U.S. Mail. Notwithstanding any provision of this Note or any loan document executed in connection with this Note to the contrary, the Borrower and SunTrust intend that no provision of this Note or any loan document executed in connection with this Note be interpreted, construed, applied, or enforced in a way that will permit or require the payment or collection of interest in excess of the highest rate of interest permitted to be paid or collected by the laws of the jurisdiction indicated below, or federal law if federal law preempts the law of such jurisdiction with respect to this transaction (the "Maximum Permitted Rate"). If, however, any such provision is so interpreted, construed, applied, or enforced, Borrower and SunTrust intend (a) that such provision automatically shall be deemed revised so as to require payment only of interest at the Maximum Permitted Rate; and (b) if interest payments in excess of the Maximum Permitted Rate have been received, that the amount of such excess shall be deemed credited retroactively in reduction of the then-outstanding principal amount of this obligation, together with interest at the Maximum Permitted Rate. In connection with all calculations to determine the Maximum Permitted Rate, the Borrower and SunTrust intend that all charges be excluded to the extent they are properly excludable under the usury laws of such jurisdiction or the United States, as they from time to time are determined to apply to this obligation; and (b) that all charges that may be spread in the manner provided by statute of the jurisdiction indicated or any similar law, be so spread.

Liability, Successors And Assigns And Choice Of Law

This Note shall apply to and bind each of the Borrower's successors and permitted assigns and shall inure to the benefit of SunTrust, its successors and assigns. Notwithstanding the foregoing, Borrower shall not assign Borrower's rights or obligations under this Note without SunTrust's prior written consent. This Note shall be governed by applicable federal law and the internal laws of the state of Florida. The Borrower agrees that certain material events and occurrences relating to this Note bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of this Note shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. Unless applicable law provides otherwise, in the event of any legal proceeding arising out of or related to this Note, Borrower consents to the jurisdiction and venue of any court located in the state of Florida.

Documentary and Intangible Taxes

In the event that any intangible tax or documentary stamp tax is due from SunTrust to any state or other governmental agency or authority because of the execution or holding of this Note, the Borrower shall, upon demand, reimburse SunTrust for any such tax paid.

Documentary Stamp Tax Statement: Exempt from Documentary Stamp Taxes under Section 201.24, Florida Statutes;

Transfer of Loan

SunTrust may, at any time, sell, transfer or assign the Note, the related security instrument and any related loan documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). SunTrust may forward to each purchaser, transferee, assignee, servicer, participant, or investor in such Securities or any Rating Agency (as hereinafter defined) rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which SunTrust now has or may hereafter acquire relating to the Borrower, any loan to Borrower, any guarantor or the property, whether furnished by Borrower, any guarantor or otherwise, as SunTrust determines necessary or desirable. The term "Rating Agency" shall mean each statistical rating agency that has assigned a rating to the Securities.

By signing below under seal, the Borrower agrees to the terms of this Note and the disbursement of proceeds as described in the Disbursements and Charges Summary form provided in connection with this transaction.

VILLAGE OF ESTERO, FLORIDA

Borrower

By

Nick Batos, Chair/Mayor

Name and title, printed or typed

ATTEST:

Village Clerk

(Seal)

Borrower's Billing Address, if different from address indicated at the top of this Note:

#34994519_v5



SECTION 1

Definitions. As used in this Addendum, the following terms shall have the meanings set forth below:

"Bank" shall mean SunTrust Bank and its successors and assigns.

"Borrower" shall refer to the maker of the attached note dated April 7, 2015 ("Note"). The terms of this Addendum are hereby incorporated into the Note and in the event of any conflict between the terms of the Note and the terms of this Addendum, the terms of this Addendum shall control.

"Business Day" shall mean, with respect to Interest Periods applicable to the LIBOR Rate, a day on which the Bank is open for business and on which dealings in U.S. dollar deposits are carried on in the London Inter-Bank Market.

"Interest Period" shall mean a period of one (1) month, provided that (i) the initial Interest Period may be less than one month, depending on the initial funding date and (ii) no Interest Period shall extend beyond the maturity date of the Note.

"Interest Rate Determination Date" shall mean the date the Note is initially funded and the first Business Day of each calendar month thereafter.

"LIBOR Rate" shall mean that rate per annum effective on any Interest Rate Determination Date which is equal to the quotient of:

(i) the rate per annum equal to the offered rate for deposits in U.S. dollars for a one (1) month period, which rate appears on that page of Reuters reporting service, or such similar service as determined by the Bank, that displays ICE Benchmark Administration ("ICE") (or any successor thereto if ICE is no longer making a London Interbank Offered Rate available) interest settlement rates for deposits in U.S. Dollars, as of 11:00 A.M. (London, England time) two (2) Business Days prior to the Interest Rate Determination Date; provided, that if no such offered rate appears on such page, the rate used for such Interest Period will be the per annum rate of interest determined by the Bank to be the rate at which U.S. dollar deposits for the Interest Period, are offered to the Bank in the London Inter-Bank Market as of 11:00 A.M. (London, England time), on the day which is two (2) Business Days prior to the Interest Rate Determination Date, divided by

(ii) a percentage equal to 1.00 *minus* the maximum reserve percentages (including any emergency, supplemental, special or other marginal reserves) expressed as a decimal (rounded upward to the next 1/100th of 1%) in effect on any day to which the Bank is subject with respect to any LIBOR loan pursuant to regulations issued by the Board of Governors of the Federal Reserve System with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities" under Regulation D). This percentage will be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Prime Rate" shall mean the publicly announced prime lending rate of the Bank from time to time in effect, which rate may not be the lowest or best lending rate made available by the Bank or, if the Note is governed by Subtitle 10 of Title 12 of the Commercial Law Article of the Annotated Code of Maryland, "Prime Rate" shall mean the Wall Street Journal Prime Rate, which is the Prime Rate published in the "Money Rates" section of the *Wall Street Journal* from time to time.

SECTION 2

Interest. The Borrower shall pay interest upon the unpaid principal balance of the Note at the LIBOR Rate plus the margin provided in the Note. Interest shall be due and payable as provided in the Note and shall be calculated as described in the Note. The interest rate shall remain fixed during each month based upon the interest rate established pursuant to this Addendum on the applicable Interest Rate Determination Date.

SECTION 3

Additional Costs. In the event that any applicable law or regulation or the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to the Bank of any amounts payable by the Borrower hereunder (other than taxes imposed on the overall net income of the Bank) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by the Bank, or (iii) shall impose any other condition with respect to the Note, and the result of any of the foregoing is to increase the cost to the Bank of making or maintaining the Note or to reduce any amount receivable by the Bank hereunder, and the Bank determines that such increased costs or reduction in amount receivable was attributable to the LIBOR Rate basis used to establish the Interest rate hereunder, then the Borrower shall from time to time, upon demand by the Bank, pay to the Bank additional amounts sufficient to compensate the Bank for such increased costs (the "Additional

Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to the Borrower by the Bank, shall be conclusive and binding in the absence of manifest error.

SECTION 4

Unavailability Of Dollar Deposits. If the Bank determines in its sole discretion at any time (the "Determination Date") that it can no longer make, fund or maintain LIBOR based loans for any reason, including without limitation illegality, or the LIBOR Rate cannot be ascertained or does not accurately reflect the Bank's cost of funds, or the Bank would be subject to Additional Costs that cannot be recovered from the Borrower, then the Bank will notify the Borrower and thereafter will have no obligation to make, fund or maintain LIBOR based loans. Upon such Determination Date the Note will be converted to a variable rate loan based upon the Prime Rate. Thereafter the interest rate on the Note shall adjust simultaneously with any fluctuation in the Prime Rate.

VILLAGE OF ESTERO, FLORIDA

By: 

Nick Batos, Mayor

Name and title, printed or typed

By: _____

Name and title, printed or typed

#34994708_v5



Agreement to Commercial Note

This Agreement dated April 7, 2015 between Village of Estero, Florida ("Borrower") and SunTrust Bank ("SunTrust") constitutes the "Agreement" referenced under "Additional Terms and Conditions" in the Commercial Note dated April 7, 2015 in the Loan Amount equal to \$1,500,000. The terms and conditions of this Agreement and the terms and conditions of the Note, and the Bank Pledge Agreement between the Borrower and SunTrust dated April 7, 2015 constitute the entire agreement between Borrower and SunTrust. All defined terms used herein that are not defined herein shall have the meanings ascribed to such terms in the above referenced Commercial Note.

Borrower and SunTrust hereby agree to the following terms and conditions:

I. AFFIRMATIVE COVENANTS

A. **Financial Information.** Borrower shall deliver the following financial information to SunTrust as indicated below:

Borrower's Annual consolidated Financial Statement that has been audited by a certified public accountant acceptable to SunTrust. Such Financial Statement shall be prepared on a GAAP (generally accepted accounting principles) basis and shall be delivered to SunTrust within one hundred and fifty (150) days after Borrower's fiscal year-end, commencing with the fiscal year ending June 30, 2015. "Financial Statement" shall include at a minimum, a balance sheet, income statement, statement of retained earnings, statement of cash flows, footnotes, appropriate supporting schedules and other information requested by SunTrust.

Borrower's annual operating budget for the following fiscal year shall be delivered to SunTrust within thirty (30) days after the close of each fiscal year ending June 30, 2015.

Borrower shall deliver within five (5) days of such request, any additional financial information with respect to Borrower as SunTrust may reasonably request.

- B. **Notification.** Borrower shall immediately notify SunTrust of (i) the occurrence of any event of default (or any circumstances which, with notice or the passage of time or both, would constitute an event of default) under the Note, (ii) the commencement of any action, suit, or proceeding or any other matter that could reasonably be expected to have a material adverse effect on the financial condition, operations, assets or prospects of Borrower, (iii) any event or development that could reasonably be expected to have a material adverse effect on the assets, operations or financial condition of Borrower.
- C. **Deposit Accounts.** Borrower shall maintain its primary banking services relationship, including without limitation its operating account, with SunTrust.

II. NEGATIVE COVENANTS

Additional Indebtedness. The Borrower shall not create, incur, assume or permit any indebtedness for money borrowed, reimbursement obligations under letters of credit, capital lease obligations or hedging obligations (collectively, "Indebtedness") or any guarantees or endorsements of any indebtedness, other than Indebtedness to SunTrust, without the prior written approval of SunTrust.

III. AFFIRMATIVE COVENANTS

Payment by ACH Direct Debit. The Borrower agrees to have all debt service payments collected via ACH Direct Debit from an account with SunTrust.

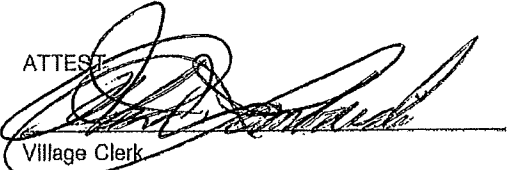
IV. CONDITION PRECEDENT TO THE MAKING OF EACH ADVANCE

- A. The making of each advance under the Note is subject to accuracy of representations and warranties and the further condition that no Event of Default or event which with the passing of time or the giving of notice or both would constitute an Event of Default shall exist at such time.

IN WITNESS WHEREOF, Borrower and SunTrust have caused this Agreement to be executed as of the date first above written.

VILLAGE OF ESTERO, FLORIDA
Borrower

ATTEST


Village Clerk

(Seal)

By 

Nick Batos, Mayor
Name and title, printed or typed

SunTrust Bank

By: 

Josh McCoy, Vice President
Name and title

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